

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 77/Lab./AIL/J/2015, dated 2nd July 2015)

NOTIFICATION

Whereas, the award in I.D. (T) No. 3/2010, dated 31-3-2015 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Shasun Chemicals and Drugs Limited, Puducherry and Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Munnettra Sangam over removal of ceiling in dearness allowance has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said award shall be published in the official gazette, Puducherry.

(By order)

A. RAJARATHINAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL
AT PONDICHERRY**

Present : Thiru G. DHANARAJ, B.SC, B.L.,
Presiding Officer, Industrial Tribunal.

Tuesday, the 31st day of March 2015

I.D. (T) No. 3/2010

The President,
Puducherry Shasun Chemicals and
Drugs Niruvana Thozhilalargal
Munnettra Thozhil Sangam,
No. 32, Veeran Koil Street,
Periyakalpet, Puducherry-14. .. Petitioner

Versus

The Managing Director,
M/s. Shasun Chemicals
and Drugs Limited,
Periyakalpet, Puducherry- 14. .. Respondent.

This industrial dispute coming on 23-3-2015 for final hearing before me in the presence of Thiruvalargal V. Ajayakumar, V. Radjasegarane and S. Lenin Durai *alias* Kalimuthu, Counsel for the petitioner, Thiru N. Devadass, Counsel for the respondent, upon hearing both sides,

upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 110/AIL/Lab./J/2010, dated 21-5-2010 for adjudicating the following:-

(1) Whether the dispute raised by the Union Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Munnettra Sangam against the management of M/s. Shasun Chemicals and Drugs Limited, Puducherry over removal of ceiling in dearness allowance in the light of 12(3) settlement No. 39/2006/LO(C)/AIL, dated 5-10-2006 is justified or not?

(2) If justified, what relief they are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

The petitioner has raised a dispute before the Labour Officer (Conciliation) in respect of dearness allowance and for production incentive. The grievances of the petitioner union were that for fixation of dearness allowance, a ceiling of ₹ 4,000 has been fixed which creates serious detriment to the workers.

The petitioner union is one of the major unions in the respondent company which is having total of 175 workers out of which the petitioner union is having more than 34 members in its rolls. Moreover, more than 120 workers in the respondent company have signed a representation which was handed over to the union stating that they are aggrieved by the fixation of ceiling of ₹ 4,000 in the case of payment of dearness allowance, it is true that the union got registered and is recognised by the respondent.

The management alleges that settlement was entered to between some of the unions and the representative of the management on 5-10-2006 under S.12(3) of the Industrial Disputes Act. The petitioner union was not a signatory to the said settlement and as per clause 2(1) of the said settlement, dearness allowance will be calculated based on Chennai City Cost of Index - 1960 Base will be continued but with a ceiling of ₹ 4,000 per month (Fixed dearness allowance plus variable dearness allowance). The details of monthly dearness allowance are also given in the said clause. The petitioner union and more than 2/3 of the workers of the respondent company are aggrieved by the fixation of ceiling of ₹ 4,000 per month.

The object of grant of dearness allowance fixed on the basis of Cost of Living Index is a well known principle and is well settled principle and so whenever dearness allowance is fixed, it will be fixed on the scientific principles which have been proved to be valid and has been enforced till date. Fixation of a ceiling of an amount of ₹ 4,000 will go to the very root of the object and concept of dearness allowance which is nothing but detrimental to the entire working clause. The said ceiling has not been circulated among the workers nor made known to the workers till it has been implemented which itself shows some foul play behind the fixation of ceiling in dearness allowance.

The management has submitted a reply before the Conciliation Officer stating that the fixation of ceiling of dearness allowance is part of 12(3) settlement and so it cannot be questioned. The said 12(3) settlement especially fixation of ceiling of dearness allowance has not been brought to the notice of the workers and had it been brought to the knowledge of the workers, the union could not have been allowed to enter into such an agreement and the same is evident from the fact that more than 120 workers have signed a representation and given to the petitioner union for taking steps for removal of the said ceiling. Hence clause 2(1) of the above stated settlement cannot claim any sanctity under S.12(3) settlement. The demand of the petitioner union cannot be denied which is the rightful claim of the workers and the same cannot be rejected by the management by raising flimsy ground that the union has been recognised by the management and so the management cannot reject the claim of the petitioner union and the demand for more than 120 workers on the ground that the union has no *locus standi* to agitate over the illegal restriction of the payment of dearness allowance. Dearness allowance is paid to the workers to meet the expenditure which is caused by the hike in prices and the cost of living which cannot be controlled by putting a ceiling and hence the ceiling fixed on the payment of dearness allowance under clause 2(1) of the settlement is liable to be removed and the entire 120 workers who signed the representation who are not agreeing the provision under the settlement are entitled to get the benefit of full dearness allowance on the basis of index. The management cannot deny the same to the workmen and if at all the management wants to deny the same, it cannot be denied only to the remaining workers and not to the 120 workers who have signed the memorandum for removal of the ceiling of dearness allowance.

This Tribunal may be pleased to quash the ceiling of ₹ 4,000 fixed on the payment of dearness allowance as per clause 2(1) of the settlement, dated 5-10-2006 in the interest of justice and to direct the respondent to pay the arrears of dearness allowance on the basis of Chennai City Cost of Living Index - 1960 Base with interest at a rate of 12% and to pass such other or further orders and justice be rendered.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:-

The above petition is not maintainable either in law or on facts and it is liable to be dismissed *in limine litis*.

The respondent denies all the allegations found in the petition, except those that are specifically admitted hereunder.

At the outset the petitioner has no right to file the above petition to claim any relief against this respondent as per the settlement, dated 5-10-2006 since at the time of this petitioner's union/sangam was not registered and therefore, ceiling of the dearness allowance and therefore the above petition is liable to be rejected or dismissed.

After expiry of the said previous settlement, dated 5-10-2006, another settlement had been convened in which all other unions including this petitioner's union had also participated in which, the said previous ceiling of salary had been removed in which, this petitioner union had also signed and therefore, as per the Act 12(3) of Industrial Disputes Act, the petitioner has no right or *prima facie* to claim any relief against the respondent.

At the time of conciliation, the respondent filed all the said facts and the same had been admitted by the petitioner union but *sue motto*, this petitioner moved before this court for this alleged claim against this respondent.

In fact, as per the last settlement, dated 15-6-2011, this petitioner or any other union has no right to claim or to press the previous settlement, dated 5-10-2006 since the said settlement was cancelled by removing the said ceiling of dearness allowance and therefore the above petition is liable to be dismissed *in limine litis*.

Even after well known about the alleged claim sought against this respondent, purposely raised the above dispute as against this respondent and therefore the above petition is liable to be dismissed.

There is no *prima facie* in the above petition and therefore the above petition is unsustainable either in law or on facts and it is liable to be rejected or dismissed.

The respondent reserves his right to file additional counter.

This court may be pleased to dismiss the above industrial dispute with cost and justice be rendered.

4. On the side of the petitioner, PW.1 was examined, and the side of the respondent RW.1 was examined, on the petitioner side no exhibits were marked. On the side of the respondent, Ex.R1 to Ex.R5 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

Both sides heard. It was submitted by the counsel for the petitioner that the petitioner union was being formed for the employees of the respondent management organisation in the name and style "Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Munnettra Thozhil Sangam". The said union was having a total of 175 workers, the workers of the said union were having a grievance with the respondent management regarding the fixation of the ceiling of ₹ 4,000 to the dearness allowances. The fixation of ceiling for the dearness allowance was not approved by any law and the dearness allowances were to be calculated as per the settled norms and procedure and also as prescribed by law. The petitioners, namely, the workers of the petitioner union were entitled for the appropriate dearness allowances and the arrears amount which would be decided and calculated. The petitioner union was having a concrete support of 120 workers among the 175 workers of the respondent management organisation. Hence the petitioner union members were eligible for the dearness allowances as prescribed by the law and as agreed by both the parties, which was formed as a settlement during the year 2006. Hence this petition.

7. On behalf of the respondent, it was contended that the petitioner union workers were not entitled for any benefit under the settlement, dated 5-10-2006. The petitioner union was formed during the month of January 2007, the petitioner union was not at all existed on the date of 5-10-2006. Subsequently, a settlement was made on the date of 15-6-2011, wherein, it was agreed by the respondent management organisation to remove the ceiling of dearness allowance of ₹ 4,000. The settlement, dated 15-6-2011 was binding the parties concerned signed by them in the abovesaid settlement, the claim of the petitioners were not tenable, the

petitioner union was not having 175 workers strength. The petitioners union did not produce any documentary evidence as to substantiate their claim before this court. Hence the petitioner union miserably failed to establish their case and the same is to be dismissed.

8. After hearing both sides, records were perused. On perusal it comes to light, on behalf of the petitioner union a witness was examined as PW.1, but no documents were produced. On behalf of the respondent, RW.1 was examined and Ex.R1 to R5 were marked.

9. On the basis of the submission of the counsel for the respondent that the petitioner union did not exist on the date of 5-10-2006 which was the claim date by the petitioner union as mentioned thereon. Originally, the petitioner union was formed and registered in the month of January 2007 and also the ceiling attached with the dearness allowance of the employees respondent management organisation was removed as per the settlement, dated 15-6-2011. Accordingly, a perusal of the evidence of PW.1 at the time of cross-examination who would say as follows (relevant portion):-

"2007-ஆம் ஆண்டு எங்களது சங்கம் பதிவு செய்யப்பட்டது. நீதிமன்றத்தில் அந்தப் பதிவு ஆவணங்களை தாக்கல் செய்யவில்லை. 5-6-2006-ஆம் தேதி அன்று போடப்பட்ட ஒப்பந்த நடவடிக்கை பற்றி எனக்குத் தெரியாது.

.....

நாங்கள் மேற்படி உடன்படிக்கையை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை.

.....

15-6-2011-ஆம் தேதி எதிர்மனுதாரர் நிர்வாகத்திற்கும் எங்கள் சங்கத்திற்கும் ஒப்பந்தம் ஏற்பட்டது என்று சொன்னால் சரிதான். அதில் எங்கள் சங்கத்தினர் கையெழுத்து போட்டுள்ளனர் என்றால் சரிதான். அதில் நானும் கையெழுத்து போட்டுள்ளேன் என்று சொன்னால் சரிதான்".

A cursory reading of the abovesaid evidence of PW.1, at the time of cross-examination would reveal the fact that the petitioner union was registered during the year 2007 and the respondent management organisation was having a settlement with their employees including the petitioner union employees on the date of 15-6-2011 was very much admitted by the PW.1 himself.

10. A perusal of the evidence of RW.1 at the time of cross-examination who would say as follows (relevant portion):-

"2010-ஆம் ஆண்டு dearness allowance-க்கு வைக்கப்பட்டிருந்த ceiling-யை 12(3) settlement படி நீக்கப்பட்டது.

.....

கடைசியாக நடந்த ஒப்பந்தம் 12(3) settlement முன்பு, இந்த வழக்கு தாக்கல் செய்யப்பட்டது".

And also a perusal of the evidence of RW.1, who would say as follows:-

“I humbly submit that all the unions including the petitioner union have participated in subsequent settlement on 15-6-2011 wherein it was agreed to remove the ceiling of dearness allowance of ₹ 4,000. The copy of settlement, dated 15-6-2011 is marked as Ex.R2.”

Accordingly, a perusal of the Ex.R2 which was a photocopy of the settlement made between the respondent management organisation authorities and the workers of the respondent management organisation, dated 15-6-2011, wherein, it has been mentioned

“Dearness allowance (Chennai Cost of Living Index - 1960 Base).

இரு தரப்பினரும் ஒத்துக்கொள்ளப்பட்டதன்படி. தற்போது அமலில் இருக்கும் நிலையான பஞ்சப்படி (FDA) மற்றும் வேறுபடும் பஞ்சப்படி (VDA) ₹ 4,000 என்ற உச்சவரம்பு நீக்கப்பட்டது. இதனடிப்படையில் பஞ்சப்படி கணக்கீட்டு முறை (Dearness allowance Based on Chennai City Cost of Index 1960 Base) கீழ்க்கண்டவாறு வழங்கப்படும்.

முதல் 1.000 (DA point) புள்ளிகள் வரை நிலையான பஞ்சப்படி (FDA) $1.000 \times \text{Ps. } 0.50 = ₹ 500$ (ரூபாய் ஐந்துநூறு மட்டும்) வழங்கப்படும் என்றும், 1001-வது புள்ளியிலிருந்து மேலாக உயரும் ஒவ்வொரு புள்ளிக்கும் தலா ₹ 2 (ரூபாய் இரண்டு மட்டும்) வீதம் கணக்கிடப்பட்டு வேறுபடுகிற பஞ்சப்படியாக (Variable DA) வழங்கப்படும்.

ஒவ்வொரு மாதமும் வேறுபடும் பஞ்சப்படி (Variable DA) மாறுபடுமெனில் அந்த வேறுபாடுகள் உள்ள புள்ளிகளுக்கு உண்டான தொகை (+ அல்லது -) 3 மாதங்களுக்கொரு முறை சமன் செய்யப்படும் (Average).

இரு தரப்பினரும் ஒத்துக்கொள்ளப்பட்டதன் பேரில். பஞ்சப்படி தொழிலாளர்களின் அவரவர் வருகைப்பதிவேட்டிற்கு ஏற்ப கீழே கொடுக்கப்பட்டுள்ள முறைப்படி கணக்கிடப்பட்டு வழங்கப்படும்.

Illustration

DA actuals
(FDA + VDA)
Month days \times (Attended days + Woff + Leave) = DA payable”

A careful study of evidence, at the time of cross-examination and at the time of chief-examination who would depose that the ceiling attached with the dearness allowance of ₹ 4,000 was agreed to be removed and it was also agreed by the parties concerned that the dearness allowance amounts would be calculated on the principles of settled law and also as per the formula as mentioned above.

11. It was also the evidence of PW.1, at the time of cross-examination that the petitioner union did not produce any document as to substantiate the case. A cursory reading of the section 102 of Indian Evidence Act, which says as follows:-

“Section 102: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side”.

It has been held in a case Sir Sobha Singh Vs. Bihari Lal Beni Parshad, (1956) Pun 1247 *vide* Law of Evidence by Ratanlal and Dhirajlal, 17th edition, Pg. 238 as follows:-

“When the evidence is all in, and a party introducing it has not, by the preponderance of evidence required by law, established his position or claim, the decision will be against him.

The party on whom the burden of proof lies begins.

The burden must be strictly discharged; in other words the plaintiff, in order to succeed, must put the court in possession of legal and satisfactory evidence, and it will not suffice to point to matters of suspicion or even to plausible conjecture”.

A conjoint reading of the abovesaid provision and above said ruling, wherein, it has been clearly held that the party on whom the burden of proof lies begins. The burden must be strictly discharged by the plaintiff, in order to succeed and must put the court in possession of legal and satisfactory evidence. In the light of the abovesaid ruling, a perusal of the records on hand, the court decided on a considered view that the petitioner did not establish their case by producing the satisfactory evidence, especially, documentary evidence. On the other hand, the respondent had established their case by producing oral and documentary evidence rebutting the case of the petitioner. Hence the court decided on a considered view that the case of the petitioner was not established by adducing the documentary evidence of the claim of the petitioner was not established by the petitioner and the petitioners are not entitled for any relief as claimed in the petition. Accordingly the points are answered.

12. In the result, it is ordered the petitioners are not entitled for any relief as it was not established and the reference is closed accordingly. Accordingly it is ordered.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of March 2015.

G. DHANARAJ,
Presiding Officer,
Industrial Tribunal,
Pondicherry.

List of petitioner's witness:

PW.1 — 11-7-2014 — S. Muthusamy

List of respondent's witness:

RW.1 — 9-2-2015 — S. Ramachandiran

*List of petitioner's exhibits: Nil**List of respondent's exhibits:*

Ex.R1 — Settlement, dated 5-10-2006

Ex.R2 — Settlement, dated 15-6-2011

Ex.R3 — Failure Report, dated 16-2-2010

Ex.R4 — Letter, dated 7-7-2008

Ex.R5 — Letter, dated 23-12-2009

G. DHANARAJ,
Presiding Officer,
Industrial Tribunal,
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
DIRECTORATE OF SCHOOL EDUCATION
(SECRETARIAT WING)**

(G.O. Ms. No. 18, dated 18th June 2015)

NOTIFICATION

Whereas, the Director of School Education, Puducherry being the authority who proposed to apply the fund donated by Tmt. V.P. Mohana, Lecturer (Retired), Thiruvalluvar Government Girls' Higher Secondary School, Puducherry for charitable purposes has applied for vesting of the funds mentioned in Schedule-A annexed hereto to the Treasurer of Charitable Endowments for Puducherry for the settlement of a scheme for the administration of the said funds;

2. Now, therefore, upon the application for the vesting of the fund as aforesaid, the Hon'ble Lieutenant-Governor, Puducherry in exercise of the powers conferred by sections 4 and 5 of the Charitable Endowments Act, 1890 (Central Act No. IV of 1890) hereby order that the amount as set out in Schedule 'A' annexed hereto shall, as from the date of publication of this notification, be vested in the Treasurer of Charitable Endowments for Puducherry to be held by him and his successors in office (subject to provisions of the said Act and the rules made thereunder) and to hold the said amount and income thereof and accrual thereto in accordance with the trust and terms as set out in the scheme annexed in Schedule 'B' hereto for the administration of the said funds;

3. And further notified that the scheme as set forth in Schedule 'B' annexed hereto has, under sub-section (1) of section 5 of the said Act, been settled for the administration of the said funds and under sub-section (3) of section 5 of the said Act and it is hereby further ordered that it shall come into force with immediate effect.

SCHEDULE-A

A sum of ₹ 50,000 (Rupees fifty thousand only) donated by Tmt. V. P. Mohana, a retired Lecturer of Thiruvalluvar Government Girls' Higher Secondary School, Laporte Street, Puducherry residing at No. B2, First Floor, No. 50 to 52, Bharathidasan Street, Muthialpet, Puducherry- 605 003.

SCHEDULE-B

1. The funds shall be known as "Mohana Mohan Trust" for Thiruvalluvar Government Girls' Higher Secondary School, Puducherry - 605 001.

2. The object of the funds shall be to distribute cash awards from the interest accrued to the students of Thiruvalluvar Government Girls' Higher Secondary School, Laporte Street, Puducherry-605 001, who secure 1st, 2nd and 3rd rank in the Plus Two Public Examination every year, provided that:

3. The amount of cash award shall be distributed in the ratio of 5 : 3 : 2 to the first, second and third rank students based on the total marks secured in the Higher Secondary Public Examination in all the 6 subjects, *i.e.*, grand total of 1,200 and not for any particular subject or discipline. If more than one student has secured the highest percentage of marks, the amount of cash award shall be divided equally and paid to them.

4. The funds shall be constituted with the amount of ₹ 50,000 (Rupees fifty thousand only) donated by Tmt. V.P. Mohana, a retired Lecturer of Thiruvalluvar Government Girls' Higher Secondary School, Laporte Street, Puducherry as mentioned in the Schedule 'A' and such other donation and contributions accruing to the funds including the income from the interest of the fund.

5. For the management and administration of the fund, there shall be a General Committee constituted with the following members, namely:-

- (1) The Principal, Thiruvalluvar Government . . . Chairman
Girls' Higher Secondary School, Laporte
Street, Puducherry (in the absence of
the Principal, the Director of School
Education).
- (2) The Vice-Principal, Thiruvalluvar . . . Secretary
Government Girls' Higher Secondary
School, Laporte Street, Puducherry.